

HOUSE No. 2694

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel E. Bosley

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making technical corrections to the combined reporting law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Daniel E. Bosley	1st Berkshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT MAKING TECHNICAL CORRECTIONS TO THE COMBINED REPORTING LAW.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Clause sixteenth of section 5 of chapter 59 of the General Laws, as appearing in the 2006 Official Edition and most recently amended by sections 3 and 4 of chapter 173 of the acts of 2008, is hereby amended by deleting paragraph (3) and inserting in place thereof the following new paragraph:-

(3) In the case of (i) a manufacturing corporation or a research and development corporation, as defined in section 42B of chapter 63, or (ii) a limited liability company that has its usual place of business in the commonwealth, is engaged in manufacturing in the commonwealth or in research and development in the commonwealth, is a disregarded entity, as defined in section 30 of chapter 63, and whose sole member is a business corporation, as defined in paragraph 1 of section 30 of chapter 63, all property owned by such corporation other than the following:--real estate, poles and underground conduits, wires and pipes; provided, however, that no property, except property entitled to a pollution control abatement pursuant to the provisions of the forty-fourth clause or a cogeneration facility as defined herein, shall be exempt from taxation if it is used in the manufacture or generation of electricity and it has not received a manufacturing classification effective on or before January 1, 1996. For the purposes of this section, a cogeneration facility shall be defined as any electrical generating unit having power production capacity which, together with any other power generation facilities located at the same site, is not greater than 30 megawatts and which produces electric energy and steam or other form of useful energy utilized for industrial, commercial, heating, or cooling purposes. This clause, as it applies to a research and development corporation as defined in section 42B of said chapter 63 or a limited liability company engaged in research and development in the commonwealth as so described in subparagraph (ii), shall take effect only upon its acceptance by any city or town.

SECTION 2. Section 1 of chapter 63 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out clause (b) in the definition of "net income" and inserting in place thereof the following clause:-

losses sustained in other taxable years, except to the extent the financial institution may deduct such losses pursuant to section 32B;

SECTION 3. Paragraph (a) of section 32B of said chapter 63 of the General Laws, as appearing in section 48 of chapter 173 of the acts of 2008, is hereby amended by adding the following sentence:-

With respect to the elimination of dividends, dividends paid among unitary affiliates shall be eliminated irrespective of whether the dividends were paid from earnings and profits generated during tax years in which the affiliates filed on a separate entity or combined basis for Massachusetts purposes.

SECTION 4. Subsection (c)(1)(3) of said section 32B of said chapter 63 of the General Laws, as appearing in said section 48 of said chapter 173, is hereby further amended by striking out clauses (i) - (iii) and inserting in place thereof the following clauses:-

(i) any member incorporated in the United States or formed under the laws of the United States, any state, the District of Columbia, or any territory or possession of the United States, but excluding any member where at least 80 percent of the gross income from all sources of the member in the tax year is active foreign business income as defined in Internal Revenue Code Section 861 (c)(1)(B);

(ii) any member, regardless of the place incorporated or formed outside the United States, if the average of its property, payroll, and sales factors within the United States is 20 per cent or more. For purposes of this determination, M.G.L. c. 63, section 38(g) shall apply.

(iii) any member that earns more than 20 per cent of its gross income, directly or indirectly, from intangible property or service-related activities the costs of which generally are deductible for federal income tax purposes, whether currently or over a period of time, against the business income of other members of the group, but only to the extent of the net income and apportionment factors related thereto. However, the inclusion of such income and apportionment factors does not apply if the exceptions to the related party add back provisions under sections 31I, 31J, and 31K would otherwise apply to the intercompany transactions at issue. For purposes of this provision, the exceptions under sections 31I, 31J, and 31K shall be applicable to intercompany transactions related to intangible property or service-related activities that are subject to this provision. A worldwide election shall be effective only if made on a timely-filed, original return for a taxable year by the members of the combined group subject to tax under this chapter. A worldwide election shall be binding for and applicable to the taxable year for which it is

made and all taxable years thereafter for a period of 10 years, subject to regulations adopted by the commissioner.

SECTION 5. Subsection (f) of said section 32B of said chapter 63 of the General Laws, as appearing in said section 48 of said chapter 173, is hereby amended by striking out clause (iii) and inserting in place thereof the following clause:-

(iii) the application of any carry forwards, including the sharing of any net operating loss or tax credit carry forwards that are attributable to the activities of the combined group's unitary business, which shall provide for the liberal sharing of such attributes among each member of the group, including financial institutions and utility corporations irrespective of any limitation on the deduction for losses sustained in other taxable years that is otherwise imposed under section 1 or 52A of this chapter, but the carry forward of losses, credits or other tax benefits that arise before the effective date of this section shall be available only to the extent permitted by law as in effect before the effective date; and

SECTION 6. Subsection (g) of said section 32B of said chapter 63 of the General Laws, as appearing in said section 48 of said chapter 173, is hereby further amended by striking out clause (iii) and inserting in place thereof the following clause:-

(iii) The commissioner shall study the use and revenue impact of the affiliated group election provided by this subsection in the first 3 years in which the election is available and shall provide a report to the clerks of the house of representatives and the senate who shall forward the same to the house of representatives and the senate committees on ways and means and to the joint committee on revenue not later than March 15, 2013. Any taxpayer participating in an affiliated group election under this subsection shall provide to the commissioner a copy of its most recently filed Federal Form 851, recomputed to account for entities owned more than 50 per cent by members of the affiliated group, and a copy of the most recent federal corporate tax return(s) filed by members of the affiliated group, provided that the report by the commissioner shall include only aggregate information, and shall not identify information relating to particular taxpayers.

SECTION 7. Chapter 63 of the General Laws as appearing in the 2006 Official Edition is hereby amended by inserting after section 32D the following section:-

Section 32E. If two or more domestic business corporations or foreign corporations participated in the filing of a consolidated return of income to the federal government, the net income measure of their excises imposed under section 32 may, at their option, be assessed upon their combined net income, in which case the excise shall be assessed to all said corporations and collected from any one or more of them. The commissioner may require corporations that have made such election to report the income measure and the non-income measure of the excise, and the minimum excise if applicable, all as set forth

85 in section 32 on a single form; provided, however, that nothing in this section shall be construed to
86 eliminate the requirement that each corporation participating in a combined return compute its non-
87 income measure and the minimum excise if applicable in accordance with said section 32.

88 Where such election is made, each and every member of the consolidated group subject to taxation
89 under section 32 shall be included in such return of combined net income. The combined net income shall
90 be determined as follows: (a) the taxable net income of each such corporation apportioned to this
91 commonwealth pursuant to the provisions of section 38 shall first be separately determined; and (b) the
92 taxable net income of each such corporation, as so determined, shall then be added together and shall
93 constitute their combined net income taxable under this chapter.

94 Any election made pursuant to this section shall be made on or before the due date, including any
95 extension of time, for the filing of the return required under this chapter and chapter 62C of each member
96 of the group so participating. Corporations electing to file a combined return under this section must
97 continue to file such a combined return for each succeeding taxable year unless and until they receive the
98 written prior approval of the commissioner to file separate returns of income. Such approval shall be
99 granted only if a valid business purpose, other than a reduction of tax, exists for the request. An
100 application to file such separate returns must be made on or before the due date, including any extension
101 of time, for the filing of the return required under this chapter and chapter 62C.

102 SECTION 8: Subsection (1)(b) of section 52A of said chapter 63 of the General Laws, as so appearing,
103 is hereby amended by striking out clause (ii) and inserting in place thereof the following clause:-

104 (ii) losses sustained in other taxable years, except to the extent the utility corporation may deduct such
105 losses pursuant to section 32B;